

# Office Action Summary

Application No.

08/942,810

Applicant(s)

Watterson et al

Examiner

Glenn Richman

Group Art Unit

3764



☒ Responsive to communication(s) filed on 8/16/99

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 21-37 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 21-37 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 14

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The art rejection from the previous office action, is maintained and incorporated herein by reference:

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr.

Rorabaugh discloses a support structure (37), and a tread base rotatably attached to the support structure such that the tread base is selectively moveable between an operating position and a storage position (col. 4, lines 50-57).

Rorabaugh does not disclose a gas spring connected between the support structure and the tread base.

Teague, Jr. discloses a gas spring (56) used for assisting the lifting of a bed base (2) into a support structure (fig. 1).

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It would have been obvious to use Teague, Jr's gas spring with Rorabaugh, as it is well known to use a gas spring between a support structure and a base, as taught by Teague, Jr., to provide an assist in moving the support structure into a storage position.

As for claims 22-24, Rorabaugh further discloses a motor mechanically coupled to the continuous belt (22), the tread base has a front end and a rear end and wherein the tread base is rotatably attached to the support structure at a point adjacent the front end of the tread base (fig. 2), and a flywheel (30).

As for claims 25, 29, 30, in addition to the limitations discussed above, Teague, Jr., further discloses lift assist means (56), and a pneumatic cylinder (56).

***Claim Rejections - 35 USC § 103***

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr. as applied to the claims above, and further in view of Schoneneberger.

Rorabaugh and Teague, Jr. do not specifically detail a latch for securing the folding device.

Schoneneberger discloses a conventional catch means for securing a tread base when in the storage position (col. 2, lines 14-18).

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It would have been obvious to use Schoneneberger's catch means when Rorabaugh and Teague, Jr.'s are in the storage position, as it is well known to use a catch means, as taught by Alleman, for holding a base frame in a storage position.

*Claim Rejections - 35 USC § 103*

5. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr. as applied to the claims above, and further in view of Wilkinson et al (622).

Rorabaugh and Teague, Jr. do not disclose feet rotatably coupled to a rear end of a tread base for selectively varying the inclination of the tread base.

Wilkinson et al disclose feet rotatably coupled to a rear end of a tread base for selectively varying the inclination of the tread base (claim 19).

It would have been obvious to use Wilkinson et al's means for adjusting the inclination of a tread base, with Rorabaugh, as it is well known to use adjustable legs, as taught by Wilkinson et al, for changing the inclination of a tread base.

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### *Conclusion*

As to the applicant's arguments:

1. The references, being combinable, is not sufficient to establish prima fascia obviousness unless the prior art, in addition, suggests the desirability of the combination

"It should be too well settled now to require citation or discussion that the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." In re McLaughlin, 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971).

2. Rorabaugh does not discuss the need for any type of means or mechanism to assist a user in lifting the tread base from the operating position to the storage position. Given the well known need to assist a user in lifting of a bed, base or exercise device of any kind, including a Murphy bed, it is obvious, as discussed above, to use the assist described in the Teague patent, to aid in the lifting of the Rorabaugh tread base.

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3. Teague does not disclose any reference to applying the counterbalancing mechanism to any other application or field of art, therefore improper for examiner, to indiscriminately pick and choose from among discrete and unrelated parts of the prior art. As it is well known to assist user's in lifting all fields, and as Teague is a well known form of aiding in an assist to a lifter, it is obvious to apply the lifting device, in any such field where an assist is required to the user in lifting.

The disclosures in a reference must be evaluated for what they would fairly teach one of ordinary skill in the art. In re Snow, 471 F.2d 1400, 176 USPQ 328 (CCPA 1973); In re Boe, 355 F.2d 961, 148 USPQ 507 (CCPA 1966). Specifically, in considering the teachings of a reference, it is proper to take into account not only the specific teachings of the reference, but also the inferences that one skilled in the art would reasonably have been expected to draw from the reference. In re Preda, 401 F.2d 825, 159 USPQ 342 (CCPA 1968); In re Shepard, 319 F.2d 194, 138 USPQ 148 (CCPA 1963). In addition, it is proper to take into consideration not only the teachings of the prior art, but also the level of ordinary skill in the art. In re Luck, 476 F.2d 650, 177 USPQ 523 (CCPA 1973). Specifically, those of ordinary skill in the art are presumed to have some knowledge of the art apart from what is expressly disclosed in the references. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962).

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4. Schonenberger and Wilkinson et al do not disclose a gas spring connected between the support structure and the tread base.

As neither, the teachings of Schonenberger and Wilkinson et al are used for the gas spring feature, this argument is moot.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Guilbault disclose a sleeping bed combined with an exercise treadmill, which uses a lift assist for aiding a user in the lifting of the bed.*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is (703)308-3170.. The examiner can normally be reached Tuesday through Thursday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for Art Unit 3764 is (703)308-0758. The facsimile number for submitting formal papers to Technology Center 3700 is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 3730 receptionist whose telephone number is (703)308-0858 or to Customer Service at (703)305-8283

gr  
November 21, 1999

  
Glenn Richman  
Primary Examiner  
AU 3764

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